



\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1148/2018

PR. COMMISSIONER OF INCOME TAX -LTU, NEW
DELHI

..... Appellant

Through: Mr. Abhishek Maratha, Sr.
Standing Counsel.

versus

SRF LTD.

..... Respondent

Through: Mr. Satyen Sethi and Mr. Anta
Trana Panda, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

ORDER

05.03.2024

%

1. The Principal Commissioner impugns the judgment of the Income Tax Appellate Tribunal [‘ITAT’] dated 03 April 2018 and has proposed the following questions for our consideration:-

“2.1 Whether the Ld. ITAT erred in quashing the reassessment proceedings on the basis of an additional evidence in the form of letter dated 14.05.2008 allegedly written by the AO without verifying authenticity of the letter and examining the context in which the letter was written and solely for the reason that the word ‘settled’ used in the letter was sufficient to quash the reassessment proceedings?”

2.2 Whether the Ld. ITAT erred in law in quashing the reassessment proceedings ignoring that the reopening was based on fresh tangible material in the form of Audit objections, which aspects had not been considered at the time of original Assessment?

2.3 Whether the Ld. ITAT in the facts and circumstances of the case erred in law in quashing the reassessment proceedings on the ground of change of opinion then the grounds raised in the audit objections which formed basis of reopening were not even considered by the Ld. ITAT at the time of original assessment?

2.4 Whether the Impugned Order of the Ld. ITAT suffers from the



vice of perversity in as much as the Impugned Order has been pressed in violation of Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963?

2.5 Whether the Ld. ITAT erred in holding the reopening void, ignoring that there was new information, though pointed out by the Audit, which was never considered by the Ld. AO in the original assessment. The reopening was therefore based on new information and could not in any way be a case of 'change of opinion'.

2.6 Whether the Ld. ITAT erred in not upholding the reassessment without considering the legal principle laid down by the Hon'ble Supreme Court in the case of *CIT v. PVS Beedis Pvt. Ltd.*, 237 ITR 13 and *Techspan India Pvt. Ltd.*, 92taxmann.com 361?"

2. The dispute itself emanates from the initiation of proceedings referable to Section 147 of the Income Tax Act, 1961 ['Act']. While dealing with the aforesaid and disagreeing with the view which was taken by the Commissioner of Income Tax (Appeals) ['CIT(A)'], the ITAT had observed as follows:-

"8. We have heard both the parties and perused the material available on record. It is pertinent to note that the issues raised in the reopening was already examined in the audit objections and vide letter dated 14.05.2008, the Assessing Officer submitted that the audit observation be treated as settled. Thereafter on the same issues the reason for re-opening were recorded on 23.05.2008. Thus, the reopening itself is not on any tangible material. The entire record was examined during the regular assessment and the CIT(A) has not properly examined this aspect. Thus the finding of the CIT(A) regarding reopening u/s 147 is not correct. The Ld. DR relied upon the decision of the Hon'ble Supreme Court in case of CIT Vs. PVS Beedis Pvt. Ltd 237 ITR 13 wherein it is held that re-opening of case u/s 147 (B) on basis of factual information given by internal audit party was valid in law. It is pertinent to note that the Hon'ble Supreme Court ratio is not applicable in the present case as in the present case audit objection was finally settled by the Assessing Officer on the issue where the assessee was asked questionnaire under regular assessment. The factual aspect of the Hon'ble Supreme Court decision is totally different from this particular case. The audit objection raised by the Assessing Officer was dealt by the Assessing Officer by giving the finding that the issue is settled, it will no more remain as audit objection. In this particular case despite settling audit objection the Assessing Officer again by giving reasons on the same issue in a different manner amounts to change of opinion. Therefore, the CIT(A) is not correct in holding that the re-opening is justified. Since the re-opening



itself is bad, we are not deciding the issues contested before us on merit. Thus, the appeal of the assessee is allowed.”

3. Pursuant to the earlier orders passed, the assessee has also placed for our perusal a copy of the letter dated 14 May 2008 which was stated to exist on the assessment record. That communication reads as under:-

**“Office of the
DY. COMMISSIONER OF INCOME TAX
Circle 9(1), Room No. 163, C.R. Building, New Delhi**

F.No.DCIT/Circle- 9(1)/2007-08/138

Dated: **14.05.2008**

To,
Sr. Audit Officer
Audit Party No. ITAP-11
AGCR
New Delhi

Sir,

Sub.: Audit Observation in the case of M/s. SRF Ltd., A.Y. 2003-04- incorrect allowance of capital expenditure -reg.

Please refer to your audit para No. 16 dated 26/03/2007 wherein it was pointed out that "the assessee had claimed an was allowed an expenditure of Rs.28046251/- under interest and finance charges towards prepayment provision on ICICI loan. This being a capital expenditure should have been disallowed."

In this regard, the explanation of the assessee was called and it was clarified by the assessee vide its letter dated 31/03/2008 that the above charges were paid to the bank as processing fees/limit enhancement charges in respect of various loans availed by the company for the purpose of carrying out its business. Since these expenses were incurred during the normal course of business the same are allowable u/s 36(1)(iii) of the I.T. Act.

The contention of the assessee has been verified with the nature of expenses and banks statements filed by the assessee and the same are allowable u/s 36(1)(iii) of the I.T. Act being *the amount of interest paid in respect of capital borrowed for the purpose of business.*

In view of the above, it is requested that the audit observation may please be treated as settled.



Yours faithfully,

(R.K. Mehta)

Dy. Commissioner of Income Tax.
Circle 9(1), New Delhi.

Copy to:

1. CIT, Delhi-III, New Delhi
2. CIT, Audit, New Delhi
3. Addl. CIT, Range- 9 New Delhi.
4. Assessee

DCIT Circle 9(1), New Delhi.”

4. As is evident from a perusal of the aforesaid communication, the Deputy Commissioner had categorically found upon due verification that the expenses incurred were in the normal course of business and thus allowable under Section 36(1)(iii) of the Act.

5. Viewed in that backdrop and in the absence of any other material, in our considered opinion, the ITAT had rightly found that there was no justification to invoke Section 147 of the Act. The appeal fails to raise any substantial question of law. It shall consequently stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 05, 2024

RW